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Of Attorneys for Defendant Boy Scouts of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JOHN SMITH, a pseudonym,

Plaintiff,

v.

**THE BOY SCOUTS OF AMERICA, a
congressionally chartered corporation,
authorized to do business in Oregon; and
CASCADE PACIFIC COUNCIL, BOY
SCOUTS OF AMERICA, an Oregon non-
profit corporation,**

Defendants.

No. 3:12-cv-1630

**BOY SCOUTS OF AMERICA'S NOTICE
OF REMOVAL OF ACTION UNDER 28
USC §§ 1332, 1441, AND 1446 (DIVERSITY
OF CITIZENSHIP)**

TO: CLERK OF THE ABOVE-ENTITLED COURT

Defendant Boy Scouts of America, through undersigned counsel, hereby removes the above-captioned action from the Circuit Court of the State of Oregon, County of Multnomah to the United States District Court for the District of Oregon, Portland Division, pursuant to 28 U.S.C. § 1332, 1441 and 1446 and respectfully files this Notice of Removal and states:

1. As more fully set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 because Boy Scouts of America has satisfied the procedural requirements for removal, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332.

All Procedural Requirements Have Been Met

2. The above-entitled was commenced in the Circuit Court of the State of Oregon for the County of Multnomah on or about August 31, 2012, bearing case number 1208-11042. Pursuant to 28 U.S.C. § 1446(a), Boy Scouts of America attaches hereto copies of all pleadings, process and orders filed in this case as Exhibit A.

3. No defendant has yet been served in this action. All defendants named in the state court action consent to removal of this action to this Court, see attached Exhibit B. *See Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009).

4. Thirty (30) days have not yet expired since the action became removable to this Court.

5. The Circuit Court for the State of Oregon for the County of Multnomah is located within the District of Oregon, Portland Division. Therefore, venue is proper pursuant to 28 U.S.C. § 117 because this Court is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

6. No previous application has been made for the relief requested herein.

7. Pursuant to 28 U.S.C. 1446(d), a copy of this Notice of Removal is being served upon plaintiff and a copy is being filed with the Clerk of the Court for the Circuit Court of the State of Oregon for the County of Multnomah.

8. This notice is signed pursuant to Federal Rule of Civil Procedure 11.

9. Boy Scouts of America reserves the right to supplement or amend this Notice of Removal.

10. If any question arises as to the propriety of the removal of this action, Boy Scouts of America requests the opportunity to present a brief and request oral argument in support of removal.

Removal is Proper as This Court Has Subject Matter Jurisdiction
Pursuant to 28 U.S.C. §§ 1332 and 1441

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest, and because there is complete diversity of citizenship between plaintiff John Smith and Boy Scouts of America.

There is Complete Diversity of Citizenship between the Parties.

12. Upon information and belief, at the time plaintiff John Smith commenced this action, and at all times since, plaintiff was and is a resident and citizen of the State of Oregon.

13. Boy Scouts of America at the time of filing of this action and presently, is a Congressionally chartered organization with its principal place of business in Texas.

14. Cascade Pacific Council, Boy Scouts of America at the time of filing of this action and presently, is an Oregon non-profit corporation.

15. Accordingly, this action involves “citizens of different states.” 28 U.S.C. § 1332(a)(1). Plaintiff is a citizen of Oregon and Defendant Boy Scouts of America is a citizen of states other than Oregon. Boy Scouts of America is effecting this removal prior to the service of any defendant. Therefore, removal of this action is proper under 28 U.S.C. § 1441(b). *See, e.g. Tanner v. Bayer Corp.*, 2009 U.S. Dist. LEXIS 130340 (finding that the so-called “forum

defendant rule” does not apply “if the removal is effected by an out-of-state defendant *before* any local defendant is served.”); *Avandia Marketing Sales Practices and Product Liab. Litig.*, MDL No. 1873, No. 2009 U.S. Dist. LEXIS 15210 (E.D. Pa., Feb. 25, 2009) (denying remand where out-of-state defendant removed action before forum defendant had been served, because “[t]he application of the forum defendant rule is different when, in an action involving multiple defendants, an out-of-state defendant removes after it has been served, but prior to service upon any forum defendant. In that situation, the rationale behind § 1441(b) and, to some extent, the protective purpose of diversity jurisdiction, are implicated, and removal by the forum defendant is proper.”).

The Amount-In-Controversy Requirement is Satisfied.

16. It is apparent on the face of the complaint that the amount in controversy exceeds \$75,000, exclusive of interest and costs. Plaintiff claims damages of \$5,100,000.00. Based on these allegations, among others, it is apparent that the amount in controversy exceeds \$75,000.

WHEREFORE, Boy Scouts of America respectfully removes this action from the Circuit Court of the State of Oregon for the County of Multnomah, to this Court pursuant to 28 U.S.C. § 1441.

Dated this 11th day of September, 2012.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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 Andrew J. Lee, OSB #023646
 Rebecca A. Lindemann, OSB #074801
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 Of Attorneys for Defendant Boy Scouts Of
 America

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September, 2012, I served the following BOY SCOUTS OF AMERICA'S NOTICE OF REMOVAL OF ACTION UNDER 28 USC §§ 1332, 1441, AND 1446 (DIVERSITY OF CITIZENSHIP) on the following parties by the method indicated below:

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- ☒ Hand Delivery
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- ☒ Hand Delivery
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☐ Overnight Courier
☐ Email

*Of Attorneys for Defendant
Cascade Pacific Council,
Boy Scouts of America*

s/ Rebecca A. Lindemann
Rebecca A. Lindemann, OSB #074801